

1
2
3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 CURTIS L. DOWNING,

8 Plaintiff(s),

9 v.

10 JOHNNIE GRAVES, et al.,

11 Defendant(s).

Case No. 2:12-CV-332 JCM (CWH)

ORDER

12
13 Presently before the court is the Ninth Circuit's referral "for the limited purpose of
14 determining whether in forma pauperis status should continue for this appeal or whether the appeal
15 is frivolous or taken in bad faith." (ECF No. 90); *see also* 28 U.S.C. § 1915(a)(3) ("An appeal
16 may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good
17 faith.").

18 "An appeal is frivolous 'when the result is obvious or the appellant's arguments are wholly
19 without merit.'" *Blixseth v. Yellowstone Mountain Club, LLC*, 796 F.3d 1004, 1007 (9th Cir. 2015)
20 (quoting *Glanzman v. Uniroyal, Inc.*, 892 F.2d 58, 61 (9th Cir. 1989)), *cert. denied sub nom. Flynn*
21 *v. Yellowstone Mountain Club, LLC*, 136 S. Ct. 1455 (2016).

22 Here, plaintiff appeals this court's April 28, 2017, order denying plaintiff's motion for
23 relief from judgment. (ECF No. 86). That order rejected plaintiff's motion because the Ninth
24 Circuit had already affirmed this court's adjudication of the case. *See* (ECF Nos. 67, 74, 86).
25 Moreover, this court declined to consider plaintiff's criticism of the Ninth Circuit's adjudication
26 of his appeal. (ECF No. 86).
27
28

Therefore, it appears that plaintiff's arguments on appeal would likely be "wholly without merit." *Blixseth*, 796 F.3d at 1007. Consequently, the appeal is not taken in good faith. *See Hooker v. Am. Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002).

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff's in forma pauperis status be, and the same hereby is, REVOKED.

DATED May 19, 2017.

James C. Mahan
UNITED STATES DISTRICT JUDGE